Before the
**FEDERAL COMUNICATIONS COMMISSION**
Washington, DC 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Acceleration of Broadband Deployment | ) | WC Docket No. 11-59 |
| Expanding the Reach and Reducing the Cost of | ) | |
| Broadband Deployment by Improving Policies | ) | |
| Regarding Public Rights of Way and Wireless | ) | |
| Facilities Siting | ) | |

## COMMENTS OF THE CITY OF VIRGINIA BEACH, VIRGINIA

### Introduction

The City of Virginia Beach, Virginia ("Virginia Beach" or the "City") respectfully files these comments in response to the Notice of Inquiry ("NOI") released April 7, 2011, in the above-entitled proceeding. Virginia Beach will provide information requested by the Commission in order to demonstrate that there is no need for the Commission to undertake any rulemaking or adjudication regarding the subject of the NOI, as current City policies and regulations do not inhibit the deployment of broadband and, in fact, encourage it. The City recognizes that it is only one of many localities potentially affected by any future action the Commission may take; it believes in good faith, however, that its broadband-related policies and regulations are not atypical of those in place throughout the United States and in other Virginia localities.

The City also suggests that the Commission should be extremely reluctant to interfere with localities' traditional authority to control their own public rights-of-way and other public sites. In Virginia, the authority of localities to control the use of their public rights-of-ways and other public property is largely controlled by statute and by the Virginia Constitution itself, such

that any rulemaking or adjudication by the Commission that alters the processes prescribed by the Commonwealth of Virginia would contravene the basic principles of federalism that have traditionally governed federal-state relations, especially in the area of local land use. In addition, as the Communications Act makes clear, Congress has declined to confer authority upon the Commission to pre-empt local authority over the placement, construction or modification of personal wireless service facilities, and instead has expressly preserved State and local authority over wireless facility siting decisions in 47 U.S.C. Section 332 (c) (7). The Commission should refrain from any rulemaking or adjudication out of respect for traditional principles of federalism and in recognition of the Commission's lack of knowledge of local conditions in the thousands of communities that would be affected by any significant changes in wireless siting and right-of-way management mandated by the Commission.

Virginia Beach, a city of approximately 435,000 people, is the largest city in Virginia. Broadband service is available to virtually every residence and business located in the City.[1] In addition, every one of its eighty-seven schools, which a total of 69,365 schoolchildren (K-12) attend, has broadband service. Broadband service is also available at all ten of Virginia Beach's public library branches, including its Central Library. The ubiquity of broadband in Virginia Beach is no accident; the ordinance and policies of the City have provided a favorable environment for the rollout and expansion of broadband service in the City. The City is acutely aware of the benefits to its citizens and businesses of the ready availability of broadband service; likewise, the Commonwealth of Virginia has ensured that broadband providers are treated favorably by, among other things, limiting the consideration that localities may receive for the use of their rights-of-way.

[1] Broadband service is provided in the City by Verizon Virginia, Inc. under a 2007 cable franchise, by Cox Communications Hampton Roads under a 2006 franchise, and by Cavalier IPTV, LLC under a 2007 cable franchise.

In the remainder of these comments, Virginia Beach will describe the laws, ordinances, policies and procedures that affect the deployment of broadband services within the City.

## I. Processes Affecting Broadband Deployment

The Commission asks for information concerning the permitting processes for personal wireless service (communication tower) siting and use of public rights-of way.[2]

*Personal wireless service facilities.* The Commission's Shot Clock Ruling has not affected the City, as the City grants discretionary applications (i.e., applications requiring City Council approval), and has always granted them, in less than 150 days, exclusive of delays requested by applicants, and absent special circumstances, does not even require discretionary approval for co-locations.[3] The City's ordinance encourages co-locations;[4] as a result, providers seeking to add antenna sites are enabled to do so without seeking or obtaining the approval of the City Council or incurring the considerable expense of constructing a new communication tower.

While providing the complete information requested by the Commission in Paragraph 15 of the NOI would be unduly burdensome,[5] as the City has granted no fewer than 101 conditional use permits since 1993, it is fair to say that, at the most, only a handful of applications filed since then, and none in the past several years, have taken more than 150 days to resolve, unless the

---

[2] The City understands the Commission's usage of the term "public right[s]-of-way" in the NOI to refer to use of City streets and alleys, rather than to public places in general; in any event; that is how the City uses the term in these comments.

[3] Co-locations require discretionary approval in the form of a conditional use permit only if they result in the expansion of the height of an existing tower or exceed the limits on the number of users specified in the use permit authorizing the tower.

[4] City Zoning Ordinance § 232 (a) http://library.municode.com/HTML/10122/level4/CO_APXAZOOR_ART2GEREPRAPALDI_CCOUSST.html#CO_APXAZOOR_ART2GEREPRAPALDI_CCOUSST_S232COTO. With very few exceptions, conditional use permits specify that additional users must be accommodated; as a result, almost all cell towers within the City have more than one user's equipment on them..

[5] The information would take weeks for the City to provide and would not materially alter the City's characterization of the speed and efficiency of its wireless siting policies and procedures. In the event that the City's statements are materially contradicted by a commenter, the City will endeavor to provide more complete information in response.

applicant itself requested a delay.[6] Perhaps even more telling of Virginia Beach's favorable disposition toward broadband service is the fact that only a single application for a new communications tower has been denied by the City Council since 1997.[7]

All necessary application procedures, forms, substantive requirements and charges are readily available, both in hard copy form from the City's Planning Department and on the City's web site. The conditional use permit procedure and application fees are set forth in Section 221 of the City Zoning Ordinance.[8] Substantive requirements are contained in City Zoning Ordinance Section 232[9] and in the Use Regulations for each of the City's zoning districts.[10] The City Zoning Ordinance is available both on-line and in hard copy form. Application forms are downloadable in Portable Document Format (PDF).[11]

The application process has been improved considerably under the 2008 revisions to Section 232. In particular, the ordinance prescribes that certain things be done by the applicant *prior to* the filing of an application as a means of avoiding delay later on in the process, the most important and useful of which is Section 232 (b), which states:

> *Preapplication conference.* Prior to submitting an application for a conditional use permit for a communication tower, the applicant shall meet with the director of planning or his designee in order to discuss:

---

[6] In 2008, the City adopted a comprehensive revision of its zoning ordinances governing the siting of communication towers. During the time the City was considering the revisions, it postponed action on a very small number of tower siting applications during the time the revisions were being considered. It is to be noted that the consideration process, both in formal public hearings and in the informal drafting stage, was open to all service providers and tower companies, a number of which took an active part in developing the final ordinance.

[7] The City's denial of the application was affirmed, in its entirety, by the Fourth Circuit Court of Appeals in *AT&T Wireless PCS, Inc. v. Virginia Beach,* 155 F.3d 423 (4th Cir. 1998). Two other applications were been withdrawn by the provider for reasons not formally made known to the City.

[8] http://library.municode.com/HTML/10122/level4/CO_APXAZOOR_ART2GEREPRAPALDI_CCOUSST.html#CO_APXAZOOR_ART2GEREPRAPALDI_CCOUSST_S221PRREGESTCOUS

[9] See footnote 4 for a hyperlink to CZO §232.

[10] Use regulations set forth the allowed uses of land in each zoning district and are found in CZO §§301, 401, etc. through 1501. Section 232 sets forth the specific requirements that pertain to communication towers.

[11] http://www.vbgov.com/vgn.aspx?vgnextoid=9f11b2c08804c010VgnVCM1000006310640aRCRD&vgnextchannel=950354cf18ad9010VgnVCM100000870b640aRCRD&vgnextfmt=default

(1) The feasibility of co-locating the proposed antenna facilities on an existing communication tower or other suitable structure, including a publicly-owned facility, where such use will not adversely affect the primary use of such facility;

(2) The availability of suitable alternative sites, including publicly-owned sites, for the proposed communication tower;

(3) Specific issues presented by the proposed application, including, but not limited to, potential interference with governmental public safety communications facilities, potential visual and other impacts on nearby properties and means, if any, of eliminating or mitigating such potential impacts;

(4) The feasibility of camouflaging wireless telecommunications equipment; and

(5) Such other matters as may be relevant to the application.

By adhering to the required procedure, the applicant and City are able to come to agreement on issues that would otherwise arise during the pendency of an application. This is especially important in light of the fact that the Planning Commission, which is required by law to make recommendations to the City Council, meets once per month, and the City Council itself votes on zoning applications twice per month. Thus, an unexpected issue that arises at a Planning Commission meeting and that causes the applicant to seek a deferral of the application would delay the final disposition of the application by at least one month; by comparison, preapplication conferences may be scheduled any time the applicant and City staff are available to meet, and very often resolve potential issues before they arise.

The efficiency of the City's wireless facility siting process is, perhaps, best illustrated by the support of the wireless industry itself. At the City Council meeting at which the revised communication tower ordinance was considered, not one member of the wireless service

industry spoke in opposition to the ordinance, and two attorneys, one representing Verizon Wireless and the other representing New Cingular Wireless, PCS (AT&T's affiliate), spoke in favor of the ordinance.[12]

The foregoing comments primarily address discretionary approvals of tower siting applications. As mentioned, however, not all personal wireless service facilities require approval by the City Council. Co-locations, as previously discussed, do not under most circumstances require City Council approval, nor do communication towers that are affixed to electric transmission line structures or that are mounted on buildings generally. Under City Zoning Ordinance Section 232 (j), such facilities are allowed as permitted principal uses (i.e., do not require a conditional use permit) in most zoning districts if the following requirements are met:

> (1) Communication towers and building-mounted antennas shall be made of materials or painted in such manner as to match, to the maximum extent practicable, the color of the structure upon which they are affixed or mounted;
>
> (2) Communication towers shall not project above the top of the structure to which they are affixed by more than twenty (20) percent of the height of the structure;
>
> (3) The owner of the communication tower or his agent submits to the planning director a list containing the name and last known address of the owner of all abutting lots, as shown on the current real estate tax assessment books or current real estate tax assessment records. The planning director shall thereafter notify such property owners of the filing of the site plan or building permit application seeking approval of the communication tower. No such site plan or building permit shall be approved for a period of seven (7) days from the mailing of the notices; and

[12] New Cingular Wireless's attorney did express disappointment that water tanks were to be used only as a "last resort" and that the ordinance prohibited towers in the P-1 Preservation zoning districts, the City's most restrictive zoning district. Water tanks are not, however, set apart in the ordinance as a last resort, and the City would note that, not long after the ordinance was adopted, New Cingular Wireless entered into a lease with the City for space for a communication tower and equipment building at a City water tank site, although not on the tank itself. In addition, the prohibition against communication towers in the P-1 Preservation District was deleted from the final ordinance that was adopted by the City Council.

(4) Building-mounted antennas shall conform to the requirements of section 207.[13]

Where a broadband provider seeks to locate wireless service facilities on City-owned property,[14] there are, in addition to the conditional use permit process, certain statutory provisions that must be followed in order to lease that property for a term in excess of five years.[15]

Virginia Code Section 15.2-2102 amplifies the Virginia Constitution's basic requirement that the governing body of a locality must advertise and receive bids for the use of its property for periods in excess of five years:

> A. Before granting any franchise, privilege, lease or right of any kind to use any public property described in § 15.2-2100 or easement of any description, for a term in excess of five years, . . . the city or town proposing to make the grant shall advertise a descriptive notice of the ordinance proposing to make the grant once a week for two successive weeks in a newspaper having general circulation in the city or town.
>
> . . . .

---

[13] Section 207 states:

(a) Antennas shall, through the use of screening, colorization, placement, design, or any combination thereof, be as visually unobtrusive as is reasonably practicable;
(b) No antenna shall be located upon any building or structure less than fifty (50) feet in height;
(c) No antenna shall extend to a height greater than twenty-two (22) feet above the highest point of the building or structure to which it is affixed;
(d) No antenna shall be erected unless a professional engineer licensed in the Commonwealth of Virginia certifies to the building official that the proposed antenna, or array of antennas, complies with all applicable Federal Communications Commission regulations, including, without limitation, regulations pertaining to the emission of radio frequency radiation; and
(e) Buildings or other structures housing electronic equipment or other equipment or materials used in connection with the operation of an antenna shall meet all application setback and landscaping requirements

[14] Publicly-owned places used by the City for purposes of locating personal wireless service facilities primarily include public parks, water tank sites (whether on a tank structure itself or ground-mounted at the site of a City water tank) and land on which the City has granted an easement for electric transmission lines.

[15] The Virginia Constitution itself contains the basic requirement that a "franchise or privilege" to use City property may not be granted for a period in excess of five years unless the locality requires prospective grantees to submit bids for the use of the property. Va. Const. Art. VII, §9. http://legis.state.va.us/Constitution/Constitution.htm

> B. The advertisement shall invite bids for the franchise, privilege, lease or right proposed to be granted in the ordinance. The bids shall be in writing and delivered upon the day and hour named in the advertisement and shall be opened in public session . . . .

While the statute only applies to leases in excess of five years, providers generally prefer leases in excess of five years. On occasion, however, a potential provider of broadband services seeks a lease of five years or less in order to avoid the bidding process otherwise required by the statute. In either case, so long as there are no other providers that express interest in leasing the site,[16] the City assents to whatever arrangement the prospective grantee prefers, so long as it understands that a lease in excess of five years must be the subject of a bid process.[17]

Having recognized that the twin processes of bidding for a lease and obtaining a conditional use permit necessarily take time, the City, with the assistance of number of wireless service providers, developed a process to expedite the eventual award of a franchise, lease or other approval for use of City property by broadband providers.[18] The process begins with the City's receipt of a letter or other communication indicating that an infrastructure provider or wireless services provider is interested in leasing a City-owned site for its facilities. The City then determines whether the interested party desires a lease in excess of five years. If not, the City then negotiates the terms of a lease of the property, conducts a public hearing,[19] and enters

---

[16] When the City receives an expression of interest in a particular site from a provider, the City notifies other the other providers operating in the City and requests that they notify the City if they are also interested in the site. If two or more providers express an interest in leasing the site, the City commences in the bid process, as the fairest way to award a lease.

[17] The City has never refused to grant a new lease of five years to a provider after the expiration of an initial five-year term.

[18] The process is not limited to broadband providers, but is, of course, open to them. If a provider of personal wireless services or an infrastructure provider has a lease to use City property for its facilities, and thereafter decides to offer broadband capability, no additional City approvals are needed simply because of the addition of broadband capability.

[19] Pursuant to Virginia Code Section 15.1-1800, a public hearing must be held for *any* disposition of City property. http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-1800.

into the lease, all within a space of a few months. This process has been used most often for renewals of existing leases where the provider's capital expenditure is minimal.

Where the initial inquiry indicates that the prospective lessee desires a longer lease term, the City utilizes the bid process previously described. Prior to advertising the invitation to bid, however, the City holds a meeting at which all prospective bidders discuss the particulars of the subject site and reach agreement on all particulars of the eventual lease to be awarded, except the monetary terms.[20] By reaching agreement on all other terms prior to the submission of the bids, the City and the bidders are able to avoid the otherwise-inevitable future disagreements on other material terms, and the highest bidder is assured that it will be awarded the lease. In addition, the same issues that would arise in connection with the application for conditional use permit approval are generally resolved in the earlier bid process.

As with co-locations of wireless service facilities on privately-owned property, the City does not require separate approval of leases for co-locations on its own property. Instead, the City awards a lease to the primary tenant and specifies in the lease that a certain number of additional providers, usually two or three, may sublease the site from the primary tenant without the need for City approval other than of a ministerial type.[21]

The Commission has requested qualitative information regarding the setting of prices for wireless facilities siting. While the City is not privy to lease terms between wireless providers and private landlords, the City has every reason to believe that the rents it receives are thoroughly market-based and comparable to those paid by providers to private entities. The fact that bids by a provider for a wireless site are not made available to other bidders, and in fact *may*

[20] Monetary terms include the base rent, additional rent for each co-locator, and annual rent increases. These are the terms that each bidder submits to the City, and that the City uses to determine which bidder is awarded the lease.

[21] A ministerial approval, such as under the City's Site Plan Ordinance or building code, must be granted if the applicant has complied with all applicable requirements and, unlike in the conditional use permit process, no discretion may be exercised by the City employee whose duty it is to review site or building plans.

*not* be revealed to other bidders by the City or the bidder itself until after bids are opened, is a good indication that rents are based only upon the market value of the site, as the rents are based exclusively upon what the providers are willing to pay, as expressed in their bids.

Since 1990, the City has leased approximately fifteen of its public places to wireless providers. In not a single one of those transactions has the City included a minimum rent provision in the bid instructions, engaged a consultant to determine a method for maximizing the rents for wireless facilities on its property, refused to award a lease for a wireless site because it was dissatisfied with the amount of the rent offered by the highest bidder, or attempted to renegotiate the rent on a wireless site. These facts demonstrate that, even in the current economic climate, the City is demonstrably far less concerned with the revenue to be realized from leasing tower sites than it is with ensuring that its policies allow the deployment of broadband coverage to its residents and businesses. In that, it has succeeded; as stated previously, broadband service is available to all of its residents and businesses. No policy, rulemaking or adjudication of the Commission could result in greater availability of broadband service in Virginia Beach.

*Rights-of-way management.*

The City's ability to control the use of its rights-of-way is heavily circumscribed by statute in Virginia. The statutory provisions are favorable to broadband providers and divest local governments of much of their traditional authority to charge and collect fees and regulate the use of their rights-of-way. While a comprehensive discussion of the statutory scheme is beyond the scope of these comments, the City suggests that an overview of the most significant of the cable franchising provisions enacted by the Virginia General Assembly in 2006 will be instructive to the Commission.

Any prospective cable provider may, of course, seek to negotiate a franchise with the local franchising authority; certain providers, however, may choose to enter into a franchise, called an "ordinance franchise," the terms of which are prescribed by statute.[22] Certificated telecommunications providers having a telecommunication franchise with the locality or leasing lines from a franchised provider, as well as any incumbent franchisee, may request an ordinance franchise forty-five days after an initial request for a negotiated franchise is made to the locality.[23] Once requested, the locality must adopt the ordinance franchise within 120 days. The operator may, however, commence providing cable service thirty days after giving notice of its election of an ordinance franchise. In such cases, the statutory bidding requirement discussed previously need not be observed; instead, the public hearing concerning the proposed grant must simply be advertised once per week for two successive weeks by the franchising locality. The same applies to renewals of franchises by incumbent cable providers except where a renewal would result in a city or town having granted a cable franchise and a renewal with combined terms in excess of 40 years.[24]

The statutory provisions ensure that all cable providers are treated fairly. Virginia Code Section 15.2-2108.22 prohibits any specific provision in an ordinance franchise from exceeding the requirements imposed in the same provision, if any, in any existing cable franchise within the locality. The requirement does not differentiate between other ordinance franchises and other negotiated franchises. As a result, when granting an ordinance franchise, a locality is bound by the least restrictive equivalent provision in any of its pre-existing franchises, even if conditions

[22] The provisions of an ordinance franchise are prescribed by Virginia Code Section 15.2-2108.22. http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2108.22.
[23] Va. Code §15.2-2108.21. http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2108.21
[24] Va. Code §15.2-2108.30. http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2108.30

have changed so as to pragmatically necessitate that the new ordinance franchise contain a provision that better protects the public interest.[25]

Additional protections are afforded cable operators by the "reciprocity" provisions of Virginia Code § 15.2-2108.26. A locality that grants a cable franchise (whether negotiated or ordinance) to a new cable provider must, upon request of a cable operator with an existing franchise, make available to the existing operator the same terms and conditions as are in the new franchise within ninety days of the request. While the existing cable operator may accept all applicable terms and conditions only in their entirety and in lieu of its existing franchise document and without the ability to accept specific terms and conditions, the provision virtually guarantees equal treatment among broadband providers with cable franchises.

Virginia Beach receives a franchise fee from the three broadband providers[26] operating in Virginia Beach in an amount equivalent to five per cent of the gross revenues received by the provider derived from the provision of cable services. The fee is the same as that allowed by federal[27] and state law[28] and received by thousands of other local franchising authorities.

Apart from the foregoing cable franchising provisions, the Virginia Code also ensures that certificated providers of telecommunications service are treated equally with other users of the public rights-of-way. Section 56-462 (C) provides that

> [n]o locality . . . shall impose on certificated providers of telecommunications service, whether by franchise, ordinance or other means, any restrictions or requirements concerning the use of the public rights-of-way (including but not limited to the

[25] For example, a older franchise agreement may well lack provisions for undergrounding of cable lines and other facilities under certain circumstances; in such a case, a locality could never grant a franchise prescribing that certain of the operator's facilities be placed underground, no matter how wise or necessary it would be to do so.
[26] Cavalier IPTV abandoned its cable franchise in 2010 and pays no fees to the City for such broadband services as it may provide by other means.
[27] 47 U.S.C. §542(b).
[28] Traditional franchise fees in Virginia have been supplanted by a Communications Sales and Use Tax pursuant to Va. Code §15.2-2108.1:1, the application of which results in the same remuneration to the City as a traditional franchise fee.

> permitting process; notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections), which are (i) unfair or unreasonable or (ii) any greater than those imposed on the following users of the public rights-of-way: all providers of telecommunications services and nonpublic providers of cable television, electric, natural gas, water and sanitary sewer services.

The City's permitting procedures and fees are set forth in Chapter 33 of the City Code. For single permits to perform work in the City right-of-way, the permit fee is $100.00, and there is no inspection fee. For work of a continuing nature, the fee is also $100.00, and the inspection fee is equal to 1.5% of the cost of construction, as shown in an engineer's estimate.[29] Notwithstanding those provisions, however, persons (such as virtually all providers of broadband service) whose regular course of business requires work on, under or over streets or affecting streets or the use of streets may be granted a blanket permit for such work.[30] The fee for a blanket permit, which is valid for one year, is $500, and no additional inspection fee is required. Permits are typically issued within two days of the filing of the application and inspections are generally completed within two days of the completion of the work[31]. These provisions obviously do not inhibit the deployment of broadband service in Virginia Beach, but can only serve to expedite it.

## II. Possible Commission Actions

The City has no objection to any action by the Commission that involves only those things discussed in Paragraph 46 of the NOI, namely, educational efforts and voluntary

---

[29] Virginia Beach City Code §33-71.
http://library.municode.com/index.aspx?clientID=10122&stateID=46&statename=Virginia

[30] *Id.* §33-61.
http://library.municode.com/HTML/10122/level4/CO_CH33STSI_ARTIIWOOVUNAFST_DIV2PEGE.html#CO_CH33STSI_ARTIIWOOVUNAFST_DIV2PEGE_S33-61ISTEBLPE
http://library.municode.com/HTML/10122/level4/CO_CH33STSI_ARTIIWOOVUNAFST_DIV2PEGE.html#CO_CH33STSI_ARTIIWOOVUNAFST_DIV2PEGE_S33-61ISTEBLPE

[31] The City's process is far more expeditious than required by the Virginia Code See Va. Code §56-462 (D) (requiring that permits be granted or denied within 45 days after an application is submitted).

programs. While Virginia Beach does not believe such efforts to be needed, and points to the 100% broadband coverage that is present in Virginia Beach, it also recognizes that improvement in the processes and procedures of any entity, whether a locality, a broadband provider or the Commission itself, is possible. It would view such efforts as an opportunity for the FCC to understand more fully that much of the difficulty complained of by providers is, in fact, attributable to the providers themselves, for example, by filing incomplete or incorrect wireless siting applications even though the application requirements are easily available and clearly set forth.

The Commission should not engage in any rulemaking or adjudicatory process in which it imposes new or altered mandates upon localities. There is absolutely no credible evidence that the City's broadband policies have been anything but beneficial to the deployment of broadband coverage. The City's policies and procedures have resulted in the deployment of broadband service throughout the entire city, while at the same time preserving important local interests such as community aesthetics, traffic safety, historic preservation and environmental protection.

There is no reason to expect that any rulemaking or adjudication by the Commission would improve the ability of broadband providers to better serve the citizens of Virginia Beach; more likely, any such rulemaking or similar action would interfere with the City's ability to manage its own rights-of-way and other public places for the good of the people that live and work in Virginia Beach

**Conclusion**

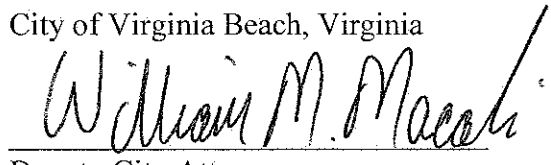
In the absence of compelling evidence that local practices are inhibiting the deployment of broadband services and clear authority for the Commission to preempt state and local laws and policies, the Commission should refrain from any rulemaking or adjudication that would

alter the processes and procedures by which local governments manage their own rights-of-way and other public places.

Virginia Beach, as well as many, many other localities throughout the United States, has had great success in encouraging the rollout and expansion of broadband service. If broadband service in some places is not as widespread as would be ideal, it is not because local governments have hindered its deployment. Most local governments recognize that broadband service is a highly desirable aspect of any community and, whenever possible, encourage its deployment. As a result, the Commission should look elsewhere in expanding the reach and reducing the cost of broadband deployment.

Respectfully submitted,

City of Virginia Beach, Virginia

By: 

Deputy City Attorney

William M. Macali
Deputy City Attorney
Office of the City Attorney
Building 1, Room 260
2401 Courthouse Drive
Virginia Beach, Virginia 23456
(757) 385-4531